1 2 3 4 5 6 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 7 AT SEATTLE DEVELOPERS SURETY AND INDEMNITY 8 Case No. COMPANY, an Iowa corporation, COMPLAINT FOR DECLARATORY 9 Plaintiff, **RELIEF** 10 VS. 11 ALIS HOMES, LLC, a Washington state JURY DEMAND limited liability company; and HOLESHOT 12 PROPERTIES, LLC, a Washington state limited liability company, as assignee of 13 PACWEST INVESTMENT GROUP, INC., a Nevada corporation, 14 Defendant. 15 For its Complaint against defendants Alis Homes, LLC ("Alis") and Holeshot Properties, 16 LLC, ("Holeshot"), as assignee of PacWest Investment Group, Inc. ("PacWest"), plaintiff 17 Developers Surety and Indemnity Company ("Developers") alleges as follows: 18 **Parties** 1. Developers is an insurance company organized under the laws of the State of 19 California and is authorized to do business in the State of Washington. Developers' principal 20 place of business is in the State of California. 21 2. Alis is a limited liability company organized under the laws of the State of 22 Washington and is licensed to do business as a general contractor in the State of Washington. 23 Based on information and belief, the members of Alis are domiciled in the State of Washington. 24 COMPLAINT FOR DECLARATORY RELIEF - Page 1 299I47

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- Holeshot is a limited liability company organized under the laws of the State of Washington. Based on information and belief, the members of Holeshot are domiciled in the State of Washington.
- 4. PacWest is a dissolved corporation organized under the laws of the State of Nevada. Based on information and belief, PacWest's principal place of business was in the State of Washington.

Jurisdiction and Venue

- 5. This Court has jurisdiction under 28 U.S.C. § 1332 in that complete diversity exists between Developers, on the one hand, and Alis, Holeshot and PacWest, on the other, and the amount in controversy exceeds \$75,000.
- 6. An actual controversy exists between the parties regarding Developers' obligations, under the liability insurance policies that it issued to Alis, with respect to a suit brought by Holeshot, as assignee of PacWest, against Alis. Under 28 U.S.C. § 2201, Developers is entitled to a declaration from this Court regarding those obligations.
- 7. Under 28 U.S.C. § 1391, venue is proper in this judicial district as Alis, Holeshot and PacWest reside in this district. In addition, this action involves a dispute regarding the availability of insurance coverage for damages that allegedly arise from this judicial district.

Background

- 8. Developers issued to Alis a commercial general liability policy of insurance number BIS00024679-01 ("Policy"), which was effective from March 3, 2016 to March 3, 2017. A copy of the Policy is attached as Exhibit 1.
- 9. Holeshot, as assignee of PacWest, filed an action against Alis and Alis' alleged bonding company in the Superior Court for the State of Washington, in and for the County of King, Case No. 17-2-06293-1 (the "Underlying Lawsuit"). A copy of the Complaint in the Underlying Lawsuit is attached as Exhibit 2, and incorporated by reference.
 - 10. Holeshot alleges in the Underlying Lawsuit that, as the assignee and successor in

interest to PacWest, it engaged Alis to perform construction services as a general contractor at the real property located at 4625 53rd Ave S., Auburn, King County, Washington ("Real Property"), formerly owned by PacWest and currently owned by Holeshot. The estimate for Alis to complete its work was \$43,436.53. Holeshot alleges that Alis breached the parties' agreement by failing to perform its work in a workmanlike manner or failing to perform it at all, failing to purchase the required materials, failing to use licensed, registered, and bonded subcontractors and, ultimately, abandoning its work. Holeshot further alleges that it had to engage subcontractors to remedy and complete Alis's work and that it has incurred damages of not less than \$50,000.00, with the total sum of damages to be established at trial. Holeshot asserts claims against Alis for breach of contract/quantum meruit, violation of the Washington Consumer Protection Act, for which Holeshot seeks treble damages, conversion/constructive trust, unjust enrichment and promissory estoppel.

11. Alis tendered the Underlying Lawsuit to Developers for defense and indemnity. Claims Resource Management, Inc., on behalf of Developers, acknowledged receipt of the tender, investigated the tender under a full and complete reservation of rights, and has retained counsel to defend Alis in the Underlying Lawsuit. Developers seeks a declaration as to its duty to defend and indemnify under the Policy.

CLAIM FOR RELIEF

(Declaratory Relief under 28 U.S.C.¶ § 2201)

- 12. Developers incorporates by reference herein the allegations set forth in paragraphs 1 through 11 above.
- 13. A present and actual controversy exists regarding the respective rights of Developers and Alis under the Policy, and Developers' obligations, if any, to defend and indemnify Alis against the Underlying Lawsuit.
- 14. Developers' seeks and is entitled to a declaration of the rights of the parties pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201.
 - 15. Developers' seeks a legal determination and declaration that it has no duty to

1	defend or indemnify Alis under the terms, conditions, exclusions and endorsements contained in
2	the Policy, and pursuant to law in relation to the Underlying Lawsuit.
3	16. A declaratory judgment is both necessary and proper at this time and does not
4	prejudice Alis in the Underlying Lawsuit. Such a declaration is necessary and appropriate in
5	order for the parties, and each of them, to ascertain their rights and duties under the Policy.
6	DEMAND FOR JUDGMENT
7	Therefore, Developers demands that judgment be entered declaring that Developers does
	not owe any duty to defend or indemnify Alis against the claims asserted in the Underlying
8	Lawsuit, awarding Developers costs and expenses, and any other relief the Court deems
9	appropriate.
10	Dated this 5th day of May, 2017.
11	SMITH FREED EBERHARD P.C.
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